

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES EUSSE, JR.,

Plaintiff,

v.

M. VITELA, et al.,

Defendants.

Case No.: 3:13-cv-00916-BEN-NLS

**ORDER DENYING MOTION TO
COMPEL FURTHER RESPONSES
TO INTERROGATORIES**

(Dkt. No. 63)

Plaintiff James Eusse, Jr., a California prisoner proceeding *pro se* and *in forma pauperis*, commenced this civil rights action pursuant to 42 U.S.C. § 1983 on April 16, 2013. (Dkt. No. 1.) Before the Court is Plaintiff's motion to compel further responses to certain interrogatories. (Dkt. No. 63.) Defendants oppose Plaintiff's motion. (Dkt. No. 66.) For the reasons stated below, the Court **DENIES** Plaintiff's motion.

I. Relevant Background

a. Summary of Factual Allegations¹

Plaintiff's surviving claims allege that Defendants Vitela and Whitman retaliated

¹ This summary is taken from the Court's earlier discovery dispute order. (*See* Dkt. No. 61.)

1 against him for exercising his First Amendment rights while he was incarcerated at
 2 Centinela State Prison. (Dkt. No. 41 at 9.) According to allegations in Plaintiff’s Second
 3 Amended Complaint, on April 6, 2011, Defendant Vitela escorted Plaintiff to a holding
 4 cage. After strip searching Plaintiff and removing Plaintiff from the cage, Defendant
 5 Vitela allegedly planted an inmate manufactured weapon in the cage. (Dkt. No. 25 at 5, ¶
 6 20.) Plaintiff alleges that Vitela then made a false “114-D” lock-up order and a “115”
 7 report, and perjured himself at Plaintiff’s trial. (Id. at 6, ¶ 22.) The alleged retaliation
 8 caused Plaintiff to fear further retaliation and kept him from pursuing his claims. (Id. at
 9 5, ¶ 18.)

10 The Second Amended Complaint also details an incident with Defendant Whitman,
 11 in which Plaintiff disputed the time he would receive in the segregated housing unit for
 12 the contraband weapon charge. (*See id.* at 6, ¶ 29.) Plaintiff believed the time spent
 13 should have been only seven months, but his 128G form indicated it would be ten
 14 months. (Id. at 6, ¶ 30.) Plaintiff alleges Defendant Whitman was part of the
 15 Institutional Classification Committee (“ICC”). (Id. at 6, ¶ 29.) Defendant Whitman
 16 allegedly told Plaintiff he “would do the full ten months and then some and that Plaintiff
 17 should learn to keep his mouth shut.” (Id. at 7, ¶ 32.) When Plaintiff asked for the 128G
 18 forms back, he alleges Defendant Whitman said “No, I’m going to keep them [because]
 19 you just caught your 3 friends an extra 2 months 15 days and I’m going to tell them that
 20 it’s [because] of you that they’re getting the extra time.” (Id. at 7, ¶ 33.)

21 **b. Procedural Background To The Parties’ Discovery Dispute**

22 On September 3, 2015, Plaintiff served Defendants with Interrogatory Numbers 1
 23 and 2. (Dkt. No. 63 at 2, citing Exh. A.) Interrogatory Number 1 seeks the following
 24 information: “How many inmates at Calipatria State Prison were given a Rule Violation
 25 Report (RVR) / CDCR 115 from Dec. 20, 2010—Dec. 20, 2012 for the specific act of
 26 Possession of an Inmate Manufactured Weapon.” (Dkt. No. 63 at 9.) Interrogatory
 27 Number 2 asks: “What was each of those Inmates - who you list for the response of

1 Plaintiffs ‘Interrogatory No. 1’ - S.H.U. assessment to include their Possible Mitigated
2 Asserted S.H.U.” (Id.) These requests essentially seek information about the number of
3 inmates that were given rules violation reports for possessing an inmate manufactured
4 weapon during a two year period, and the Security Housing Unit (“SHU”) terms imposed
5 on those inmates. (*See id.*)

6 On October 6, 2015, Plaintiff received Defendants’ responses. Defendants
7 objected to Interrogatory Numbers 1 and 2 on the grounds that they are over broad,
8 unduly burdensome and seek irrelevant information not reasonably calculated to lead to
9 the discovery of admissible evidence. (Dkt. No. 63 at 10-19 (Exhs. B & C); *see also* Dkt.
10 No. 66 at 4-5.)

11 Plaintiff wrote a meet and confer letter to Defendants’ counsel on October 19,
12 2015, and had not heard back as of the date he constructively filed the present motion.
13 (Id. at 2.) Plaintiff constructively filed his motion on November 24, 2015, which was
14 received and filed *nunc pro tunc* to December 3, 2015. (*See id.*) He seeks to compel
15 further responses to Interrogatory Numbers 1 and 2 on grounds the information sought is
16 relevant and that Defendants’ objections lack the requisite specificity and thus are
17 waived.

18 Defendants filed their opposition on January 4, 2016. (Dkt. No. 66.) Defendants’
19 opposition states the parties met and conferred via telephone on December 15, 2015, but
20 were unable to resolve the dispute. (Dkt. No. 66-1 at ¶ 2.)

21 **II. Legal Standard**

22 Federal Rule of Civil Procedure 26(b)(1) sets forth the scope of discovery as
23 follows:

24 Parties may obtain discovery regarding any nonprivileged information that is
25 relevant to any party’s claim or defense and proportional to the needs of the
26 case, considering the importance of the issues at stake in the action, the
27 amount in controversy, the parties’ relative access to relevant information, the
parties’ resources, the importance of the discovery in resolving the issues, and

1 whether the burden or expense of the proposed discovery outweighs its likely
2 benefit. Information within this scope of discovery need not be admissible in
evidence to be discoverable.

3 The party seeking to compel discovery has the burden of establishing that his request
4 satisfies the relevancy requirements of Rule 26. *Bryant v. Ochoa*, 2009 U.S. Dist. LEXIS
5 42339, 2009 WL 1390794, at *1 (S.D. Cal. May 14, 2009). Once the party seeking
6 discovery has established that his request meets this relevancy requirement, “the party
7 opposing discovery has the burden of showing that the discovery should be prohibited, and
8 the burden of clarifying, explaining or supporting its objections.” *Id.*

9 III. Discussion

10 The Court first addresses Plaintiff’s contention that Defendants’ objections lack the
11 requisite specificity. Plaintiff relies on *Caldwell v. Ctr. For Corr. Health*, 228 F.R.D. 40
12 (D.D.C. 2005) to support his argument. In *Caldwell*, the district court explained that
13 objections asserting an interrogatory is overly broad, burdensome or oppressive must be
14 supported by affidavits or evidence that reveals the nature of the burden, and the failure to
15 do so waives the objection. *See id* at 44. The *Caldwell* court also stated, however, that
16 even if such an objection is waived, a plaintiff is not entitled to discovery that is not
17 relevant. *Id.*

18 Even assuming *arguendo* that *Caldwell* is applicable persuasive authority,
19 Defendants did not rely on their over breadth and burdensome objections in their
20 opposition. (Dkt. No. 66 at 4-7.) Instead, Defendants relied on their objections based on
21 relevance. (*Id.*) Accordingly, Plaintiff’s contention that Defendants’ objections lack
22 specificity is unsupported. The Court next turns to whether the discovery Plaintiff seeks is
23 relevant.

24 Plaintiff avers the discovery sought is relevant because he needs to support his claim
25 that Defendant Whitman’s assessment of a possible 10-month SHU term for Plaintiff was
26 an act of retaliation. (Dkt. No. 63 at 5.) He contends that other inmates charged with
27 possessing an inmate manufactured weapon were only assessed a term of 7 months and 15

1 days. (Id.) He also asserts he previously possessed three 128-G forms that showed other
2 inmates with the same charges were only given a possible 7 months and 15 days. He
3 contends Defendant Whitman took the forms from him and refused to give them back.
4 (Dkt. No. 63 at 6, *citing Second Amended Compl.*, Dkt. No. 25, ¶¶ 29-33.)

5 Defendants contend the discovery sought has no bearing on whether Defendants
6 retaliated against Plaintiff in response to Plaintiff filing administrative appeals against
7 them. (Dkt. No. 66 at 45.) They contend the SHU terms imposed on other inmates will
8 not establish whether Defendant Vitela planted a weapon in Plaintiff's cell for filing an
9 inmate appeal against him or that Defendant Whitman imposed an improper term on
10 Plaintiff for filing an inmate appeal. (Id. at 5.)

11 The Ninth Circuit has stated the five basic elements of a "viable claim" of First
12 Amendment retaliation in the prison context as follows: "(1) An assertion that a state actor
13 took some adverse action against an inmate (2) because of (3) that prisoner's protected
14 conduct, and that such action (4) chilled the inmate's exercise of his First Amendment
15 rights, and (5) the action did not reasonably advance a legitimate correctional goal."
16 *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009) (*citing Rhodes v. Robinson*, 408
17 F.3d 559, 566 (9th Cir. 2005)).

18 Here, Plaintiff does not argue the discovery sought is relevant to his claim that Vitela
19 planted a weapon. (*See* Dkt. No. 63, *passim*.) Rather, Plaintiff only takes the position that
20 the discovery is relevant to his claims against Defendant Whitman. (Dkt. No. 63 at 5
21 (discovery is "needed to demonstrate that Defendant Whitman's assessment of a possible
22 10-month S.H.U. term for Plaintiff was an act of retaliation.") The Court likewise does not
23 see how information about the duration of other inmates' SHU terms would be relevant to
24 Plaintiff's claim that Defendant Vitela planted a weapon in his cell. Accordingly, the Court
25 denies Plaintiff's motion to the extent Plaintiff moves to compel further responses from
26 Defendant Vitela as to Interrogatory Numbers 1 and 2.

27 The Court next turns to whether the discovery sought is relevant or may lead to

1 admissible evidence regarding Plaintiff's claim that Defendant Whitman retaliated against
 2 him. Plaintiff apparently asserts that if other inmates charged with possessing a
 3 manufactured weapon were given the standard 7 and a half month SHU term, whereas
 4 Plaintiff was given a ten month term, then it would tend to show Whitman retaliated against
 5 him. (*See* Dkt. No. 63 at 5.) Defendants respond that information about other inmates'
 6 SHU terms are not relevant because mitigating and aggravating factors can be considered
 7 in assessing an SHU term, and so each rules violation hearing for each inmate would be
 8 distinct and irrelevant to one another. (Dkt. No. 66 at 5.)

9 The Court agrees with Defendants that information about other inmates' SHU terms
 10 are not relevant to Plaintiff's retaliation claim against Defendant Whitman. A SHU term
 11 for an inmate is calculated based on the "expected" term under the regulations, but other
 12 factors may exist to warrant imposing a lesser or greater period of confinement. (Dkt. No.
 13 66 at 5, *citing* 15 Cal. Code Regs. § 3341.5(c)(9)(D)(2); *see also* Dkt. No. 63 at 6).² When
 14 calculating a SHU term, the ICC addresses "aggravating and mitigating factors," which are
 15 taken into consideration when assessing a SHU term. *Id.* The discovery sought therefore
 16 would not necessarily shed light on whether Defendant Whitman retaliated by imposing a
 17 ten month sentence because the SHU terms assessed may vary based on each inmates'
 18 aggravating or mitigating factors. Accordingly, Defendants need not provide further
 19 responses to these interrogatories because the interrogatories seek irrelevant information.

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26 ² Both parties cite to 15 Cal. Code Regs. § 3341.5(c)(9)(D)(2) in their briefs. (Dkt. No. 63 at 6; Dkt. No.
 27 66 at 5.) These provisions and their subsections, however, now appear to be found under 15 Cal. Code
 Regs. § 3341.9(a).

1 **IV. Conclusion**

2 For the forgoing reasons, the Court **DENIES** Plaintiff's motion to compel further
3 responses to interrogatories.

4 **IT IS SO ORDERED.**

5 Dated: February 4, 2016

A handwritten signature in cursive script, reading "Nita L. Stormes", written over a horizontal line.

Hon. Nita L. Stormes

United States Magistrate Judge